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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)	Bk. No. 09-41735
)	
ANGELICA APOLINAR,	)	CHAPTER 13
)	
Debtor.	)	R.S. No. DRP – 647
)	
_____	)	MOTION FOR RELIEF FROM
	)	<u>AUTOMATIC STAY</u>
)	
	)	Hearing-
	)	Date : January 22, 2010
	)	Time : 10:00 AM
	)	Place : U.S. Bankruptcy Court
	)	1300 Clay Street, 2nd Floor
	)	Oakland, CA
_____	)	Courtroom 215

U.S. Bank, NA, it Successors and/or Assigns, its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtor's property. This Motion is brought pursuant to 11 U.S.C. §362(d)(1) for "cause" and due to the failure of Debtor to make required payments as set forth in the attached Declaration. Debtor's

1 failure to make required payments provides "cause" for relief from the Automatic Stay in
2 accordance with the ruling of the Bankruptcy Appellate Panel in In re: Ellis, 60 B.R. 432.

3
4 In addition, and in the event that this Court continues the Automatic Stay, Movant
5 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including
6 a requirement that Debtor reinstates all past arrearages and immediately commence regular monthly
7 payments.

8 Movant alleges that the commercially reasonable value of the subject Property is
9 approximately \$230,000, as evidenced by Debtor's Schedules filed with this Court. Movant
10 requests that this Court take judicial notice of the aforementioned Schedules pursuant to Federal
11 Rule of Evidence Section 201.

12 Movant also seeks an Order terminating and vacating the Automatic Stay for all
13 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of
14 appropriate foreclosure remedies, without the requirement of further notice or publication, except as
15 may be required by state law.

16 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this
17 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to
18 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to
19 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and
20 Electric Co., 549 U.S. _____ (2007), and as allowed under applicable non-bankruptcy law.

21 In addition, Movant requests such further relief as is just.

22 This Movant also seeks an Order waiving the 14-day stay described by Bankruptcy
23 Rule 4001(a)(3).

24 This Motion shall be based on these moving papers, as well as the attached
25 Declaration.

26 Responsive pleadings, points and authorities and declarations are not required, but
27 may be filed, pursuant to Bankruptcy Local Rule 4001(f).
28

1 In the event neither Debtor, the Debtor's Counsel or the Trustee appears at a hearing
2 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to
3 foreclose on the Debtor's property located at **1308 Portsmouth Street, Oakley, California** and
4 obtain possession of such property without further hearing.
5

6 WHEREFORE, Movant prays judgment as follows:

7 1.) For an Order granting relief from the Automatic Stay, permitting this Movant to
8 move ahead with foreclosure proceedings under Movant's Deed of Trust.

9 2.) For such Order regarding adequate protection of Movant's interest as this Court
10 deems proper.

11 3.) For attorneys' fees and costs for suit incurred herein.

12 4.) For an Order waiving the 14-day stay described by Bankruptcy Rule 4001(a)(3).

13 5.) For such other relief as this Court deems appropriate.

14 PROBER & RAPHAEL
15 A LAW CORPORATION

16 DATED: December 21, 2009

17 By /s/ Dean R. Prober Esquire
18 DEAN R. PROBER, ESQUIRE, #106207
19 Attorney for Secured Creditor
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